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**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF CHIEF COUNSEL**

**In the Matter of:**

**New England Ski and Scuba, LLC,  
Respondent.**

**PHMSA Case No. 04-602-CR-EA  
DMS Docket No. PHMSA-2007-27636-2**

**ORDER OF THE CHIEF COUNSEL**

This matter is before the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) for a determination regarding the Notice of Probable Violation (Notice) issued to New England Ski and Scuba, LLC, on December 28, 2004. The Notice formally initiated proceedings against Respondent for four violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180, related to the retesting of cylinders.

**Background**

At all times relevant to this proceeding, Respondent was a DOT-approved cylinder retester, authorized in accordance with 49 C.F.R. § 107.805, to certify cylinders for the transportation of hazardous materials in the United States. Accordingly, Respondent is subject to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of Chief Counsel.<sup>1</sup>

In response to a complaint filed with the Department of Consumer Protection of the State of Connecticut, on June 16, 2004, an inspector from the Office of Hazardous Materials Enforcement visited Respondent's facilities in Vernon, Connecticut. The inspector interviewed the owner, Kirk Beatie, concerning Respondent's training and testing practices and requested

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<sup>1</sup> See 49 U.S.C. § 5103 (2005); 49 C.F.R. § 107.301 (2004).

access to facilities and records. Mr. Beattie acknowledged that employees who assisted him with cylinder requalification and filling of dive tanks (by de-valving and valving cylinders, checking test dates, filling cylinders with water, and lining up cylinders for hydrostatic testing) had not received any formal, documented training. Respondent was unable to produce copies of the exemptions for the exemption cylinders Respondent tested. In addition, Respondent did not have a copy of the correct edition of CGA pamphlet C-6 or C-6.1. At the conclusion of the inspection, the inspector provided Respondent with an exit briefing outlining three probable violations.

On December 28, 2004, the Office of Chief Counsel issued the Notice, proposing to assess a civil penalty in the amount of \$30,640.00, reflecting a \$7,410 reduction for Respondent's corrective actions. In response, Respondent's counsel sent a letter, dated January 11, 2005, stating Respondent objected to the Notice and requesting an informal conference. Because a criminal case related to the same violations was pending, the Office of Chief Counsel ceased action on the civil case until the criminal case was concluded. On August 23, 2005, the United States Attorney for the District of Connecticut announced Mr. Beattie had "pleaded guilty to a one-count Information charging him with willfully violating the Federal Hazardous Materials Transportation Law."<sup>2</sup> Mr. Beattie admitted "he knowingly and willfully violated federal regulations relating to the testing and requalification of compressed gas cylinders by stamping [Respondent's RIN] on compressed gas cylinders without having performed the hydrostatic testing required for requalification."<sup>3</sup> In addition, Mr. Beattie admitted he violated the HMR "by failing to verify the accuracy of the hydrostatic retest equipment daily prior to testing of actual compressed gas cylinders; by failing to maintain current copies of exemptions

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<sup>2</sup> Andover Man Who Violated Hazardous Materials Transportation Laws Is Sentenced. United States Attorney's Office District of Connecticut Press Release (Dec. 5, 2005) *available at* <http://www.usdoj.gov/usao/ct/Press2005/20051205-2.html>.

<sup>3</sup> *Id.*

and pamphlets governing the inspection, testing and marking of cylinders; and by failing to train, test and certify employees engaged in cylinder requalification and filling.”<sup>4</sup>

On August 3, 2006, the Respondent’s counsel provided a copy of a “Membership Transfer Certificate” dated March 21, 2006, demonstrating that Respondent is under new ownership.

**Discussion**

Respondent admitted to the inspector and in federal court that it certified, marked, represented and offered cylinders as meeting the requirements of the HMR when it did not perform hydrostatic testing on the cylinders. In addition, Respondent admitted it failed to properly calibrate its equipment; failed to ensure its hazmat employees received the necessary training; and falsified retesting records.

The primary purpose of a civil penalty action is to encourage future compliance. Because Respondent is under new ownership, a civil penalty would impose an unwarranted burden on a new owner who was not responsible for the prior violations.

**Conclusion**

Accordingly, **I dismiss this case with prejudice.** This Order constitutes written notification of these procedural rights.

3/16/2007  
Date

Sherri Pappas  
Sherri Pappas  
Acting Chief Counsel

Enclosure

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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<sup>4</sup> *Id.*

**CERTIFICATE OF SERVICE**

This is to certify that on the \_\_\_\_\_ day of MAR + 6 2007, 2007, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Steve L Seligman, Esq.  
Katz and Seligman  
130 Washington Street  
Hartford, CT 06106

Original Order  
Certified Mail – Return Receipt

Mr. Ryan Posten  
Office of Hazardous Materials Enforcement  
Washington, D.C. 20590

One Copy  
Internal E-Mail

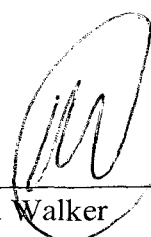
Ms. Colleen Abbenhaus, Chief  
Office of Hazardous Materials Enforcement  
Eastern Region Office  
West Trenton, NJ 08628

One Copy  
Internal E-Mail

U.S. DOT Dockets  
U.S. Department of Transportation  
400 Seventh Street, S.W., RM PL-401  
Washington D.C. 20590

One Copy  
Personal Delivery

MAR + 6 2007

  
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Willard Walker